IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1903 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AREF IBRAHIM BHAM

Versus

KHADIJABIBI AREF IBRAHIM BHAM

Appearance:

MRS KETTY A MEHTA for Petitioner

MR RS SANJANWALA for Respondent No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/11/2002

ORAL JUDGEMENT

1. This is a revision application under section 115 of the Code of Civil procedure, 1908 (as amended in 1976), wherein the applicants are original defendants in Regular Civil Suit No.750/91 pending in the court of Civil Judge (Senior Division), Surat. The opponents-plaintiffs had filed the suit for a declaration

that the plaintiffs are in use, occupation and possession of House No.5/80 of Limada Oli, Randher, Surat and that the present applicants-defendants have no right to create any hindrance in the use and occupation of the said property. The plaintiffs also prayed for a permanent injunction against the defendants restraining them from selling and/or in any other manner creating an obstruction in the plaintiff's use and occupation of the said property, etc.

2. The trial court, by order passed below Exh.5, initially granted an exparte injunction, which, however, was vacated after hearing the parties. The present applicants-original defendants had also preferred an application at Exh.16 in the suit, praying for a prohibitory injunction restraining the present opponents-original plaintiffs from entering the suit premises and/or from interfering with or obstructing the possession and enjoyment of the suit property by the plaintiffs. This application at Exh.16 was granted in favour of the defendants.

3. The present opponents-original plaintiffs being aggrieved by the aforesaid orders, passed by the trial court below Exh.5 and 12, preferred Misc. Civil Appeal No.91/93, under Order 43, Rule 1, which appeal was dismissed. In short, the order passed by the trial court in favour of the present applicants-original defendants by order below Exh.16 was confirmed.

4. The present applicants then gave applications at Exhs.94 and 108 before the trial court, the first application being for taking appropriate action against the plaintiffs under the Contempt of Courts Act, and the latter application for restitution of possession which had been forcibly taken from them.

5. The trial court by a common order dated 15th May 1994 (passed below Exh.94 adn 108), rejected the said applications with the observation that appropriate and final orders can only be passed after the evidence is recorded in the suit. In substance, therefore, the trial court did not reject the application finally on merits, but only postponed effective orders thereon in the light of the evidence that may be brought on record by the parties to the suit.

6. This order was challenged by the defendants by preferring Civil Misc. Appeal No.151/94, which was dismissed by judgement and order dated 7th August 1995. It is this order in appeal which is the subject matter of

the present revision.

7. It is both relevant and pertinent to note that the Code of Civil procedure (1908), has been amended by the Code of Civil Procedure (Amendment) Act, 1999, which was published in the Gazette of India dated 30th December 1999. However, by virtue of the Notification issued under section 1, subsection (2) of the said Amendment Act, the amendment came into force from 1st July 2002.

8. For the present purposes, it requires to be noted that section 12 of the Amendment Act amends and modifies section 115 of the principal Act, whereby (inter alia) a new proviso has been substituted as under:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

It therefore becomes obvious that the High Court while exercising its powers of revision under section 115 of the Code (as amended), would be justified in entertaining such a revision application, and/or interfering with the impugned order, only where the impugned order, if it had been made in favour of the applicant in revision, would have finally disposed of the suit or other proceedings. In other words, a revision under section 115, after the amendment, would be entertainable only if the applicant in revision can successfully contend that if the trial court had granted the application made by the applicant, it would have disposed of the suit or other proceedings (as the case may be).

9. It is also relevant to note that the aforesaid Amending Act of 1999, vide section 32 thereof, deals with repeal and savings.

9.1 By virtue of section 32, subsection (2), clause (i), the amendment introduced by section 12 of the Amending Act shall not affect any proceeding for revision which had been finally disposed of. Obviously, therefore, the only proceeding which the amendment does not and cannot affect is a revision which has been finally disposed of. In other words, any revision application which is pending admission, or pending final hearing after admission, would be governed by the amendment introduced by section 12 of the Amending Act.

10. On the facts and circumstances of the case, it cannot be said that the application made by the present applicant in revision, had it been granted by the trial court, would have disposed of the suit. Under the circumstances, it must be found that this court cannot "vary or reverse any order made, or any order deciding an issue....".

11. It necessarily follows that the present revision is therefore not maintainable and/or incompetent.

12. The aforesaid view has also been expressed by this Court in the case of Parakramsinh Vikramsinh Jadeja Vs. Yogi Corporation, reported at 2002(3) GLR page 2040.

13. This revision application is, therefore, dismissed and rule is discharged with no order as to costs.

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